

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

AGIS SOFTWARE DEVELOPMENT, LLC,

Plaintiff,

v.

HTC CORPORATION,

Defendant.

CASE NO. 2:17-CV-0514-JRG

JURY TRIAL DEMANDED

**HTC CORPORATION'S UNOPPOSED MOTION FOR LEAVE TO FILE
MOTION TO SUPPLEMENT THE RECORD IN SUPPORT OF MOTION TO
DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(2) OR, IN THE ALTERNATIVE,
TO TRANSFER VENUE TO THE NORTHERN DISTRICT OF CALIFORNIA**

Based on good cause, Defendant HTC Corporation (“HTC”) respectfully requests this Court grant it leave to file an opposed motion to supplement the record in support of its pending Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2) or, in the Alternative, to Transfer Venue to the Northern District of California. D.I. 29.

I. GOOD CAUSE EXISTS FOR GRANTING HTC LEAVE TO FILE A MOTION TO SUPPLEMENT THE RECORD

On January 22, 2018, HTC moved to transfer the above-captioned action filed by AGIS Software Development LLC (“Plaintiff” or “AGIS”) to the Northern District of California. (D.I. 29). HTC submitted evidence that the core of the accused applications in this case is provided by third-party Google LLC (“Google”), and the relevant witnesses and information about those functionalities are located in and around Northern California. Specifically, HTC submitted declarations from Google witnesses establishing that, for the accused functionality related to the Google Maps and Google’s Find My Device (formerly known as Android Device Manager), the source code and other information regarding these applications is confidential and proprietary, and that those documents and Google’s relevant witnesses are located in the Northern District of California. D.I. 29 at 6 (citing 2:17-cv-00513-JRG, D.I. 36-6, ¶¶ 1, 6-8); D.I. 29 at 5 (citing 2:17-cv-00513-JRG, D.I. 36-4 at ¶¶ 1, 4; 2:17-cv-00513-JRG, D.I. 36-5 at ¶ 1; and 2:17-cv-00513-JRG, D.I. 36-6 at ¶¶ 6-8).

On February 20, 2018, AGIS filed its Opposition to HTC’s Motion to Dismiss for Lack of Personal Jurisdiction or, in the Alternative, to Transfer Venue to the Northern District of California (D.I. 40). In its Opposition, AGIS dismissed the relevance, location and convenience of non-party Google, arguing that their infringement claims against HTC were premised on and provable through use of “publicly available” Android operating system source code and other information. (*Id.* at 2, 24). In fact, AGIS explicitly disputed Google’s possible role as a non-

party and took the position that any discovery into Google's confidential and proprietary source code and other information for Google Maps and Find My Device is irrelevant to the claims asserted against HTC. D.I. 40 at 24-25

Notwithstanding these representations in its transfer opposition, on August 23, 2018 and August 29, 2018, Plaintiff served deposition and document subpoenas on Google in both of the consolidated cases against Android Defendants, *AGIS Software Development LLC v. Huawei Device USA Inc., et al.*, No. 2:17-cv-513-JRG (E.D. Tex.) and *AGIS Software Development LLC v. HTC Corp.*, No. 2:17-cv-514-JRG (E.D. Tex.). These subpoenas seek deposition testimony and documents such as the source code for Google Maps and Find My Device, documents *showing* the structure, operation, design, development, functionality, features, testing, and manufacture for portions of Google Maps and Find My Device related to the accused features, and documents showing the communication protocols used with Android Applications between one or more Google Servers and/or one or more other Android Devices—precisely the information AGIS previously represented wasn't relevant to its infringement theories. Because Plaintiff's recent subpoenas to Google contradicts its previous attempt to undermine the significance of Google's documents and witnesses in the transfer analysis, good cause exists to allow HTC leave to file a motion to supplement the record.

II. CONCLUSION

For the foregoing reasons, HTC respectfully requests the Court grant HTC leave to file the opposed Motion to Supplement the Record in Support of its Motion to Transfer Venue to the Northern District of California filed separately pursuant to local rules CV-7(k).

Dated: September 19, 2018

Respectfully submitted,

/s/ Miguel Bombach

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ATTORNEYS FOR DEFENDANT

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on September 19, 2018, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Miguel J. Bombach
Miguel J. Bombach

CERTIFICATE OF CONFERENCE

Pursuant to L.R. CV-7(i), the undersigned hereby certifies that counsel for HTC Corporation conferred with counsel for AGIS via phone on September 19, 2018 regarding whether AGIS opposes the motion for leave. Plaintiff informed counsel for HTC Corporation that it does not oppose the motion for leave, but opposes the motion to supplement the record.

/s/ Miguel J. Bombach
Miguel J. Bombach